

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
ANN BURTON, :  
: 11-CV-1417 (SLT) (LB)  
Plaintiff, :  
: July 11, 2011  
:  
v. : Brooklyn, New York  
:  
SILVERCREST CENTER FOR :  
NURSING AND REHABILITATION, :  
et al., Defendant. :  
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TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE  
BEFORE THE HONORABLE LOIS BLOOM  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: ANN BURTON, PRO SE

For the Defendant: ALESIA KANTOR, ESQ.

Audio Operator:

Court Transcriber: ARIA TRANSCRIPTIONS  
c/o Elizabeth Barron  
102 Sparrow Ridge Road  
Carmel, NY 10512  
(215) 767-7700

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1                   THE CLERK: Civil cause for initial conference,  
2 docket number 11-CV-1417, Burton v. Silvercrest Center for  
3 Nursing and Rehabilitation, et al.

4                   Will the parties please state your names for the  
5 record?

6                   MS. BURTON: My name is Ann Burton.

7                   MS. KANTOR: Alesia Kantor, Nixon Peabody LLP, 50  
8 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, for  
9 all defendants.

10                  THE CLERK: The Honorable Lois Bloom presiding.

11                  THE COURT: Good afternoon, Ms. Burton, and good  
12 afternoon, Ms. Kantor. I apologize of the technical  
13 difficulties.

14                  Ms. Burton, at the last conference, I explained to  
15 you that all proceedings are digitally recorded and,  
16 therefore, you would not need to bring any devices in to get  
17 transcripts. If we ever need them, we can get them from the  
18 computer, which means we have to rely on our computers to  
19 work and we're all very dependent on our machines. So I  
20 apologize that we were delayed by ten minutes to get the  
21 computer up and running.

22                  This is a rescheduled initial conference. As you  
23 both know, the first --

24                  Somebody has their papers on a mic. There's a  
25 flat mic. So if it rubs against the mic., there's going to

1 be a noise. Okay.

2 At that failed initial conference where Ms. Kantor  
3 appeared by telephone, I directed defendants' counsel to  
4 produce plaintiff's personnel file to her as well as the  
5 legitimate, non-discriminatory reason that she was  
6 terminated from her position.

7 Ms. Kantor, was that done?

8 MS. KANTOR: We have the documents, your Honor,  
9 but Ms. Burton wished to wait until --

10 THE COURT: I'm going to ask her to give them over  
11 to you so that in my presence, they have been produced to  
12 you, okay?

13 MS. BURTON: Yes, your Honor.

14 THE COURT: Thank you.

15 Now, this is just the start, Ms. Burton. This is  
16 not all the discovery. Discovery is the process where you  
17 try to get information from defendants and defendants will  
18 try to get information from you regarding this case. I  
19 asked you at the last conference and you told me you had in  
20 fact received the blue manual from the Court.

21 MS. BURTON: Yes, your Honor.

22 THE COURT: And the blue manual has a whole  
23 section on discovery. There are five methods of discovery.  
24 The rules are set forth in the Federal Rules of Civil  
25 Procedure, Ms. Burton. The Federal Rules are the same rules

1 whether you have counsel or you don't have counsel, and we  
2 try in that manual to boil it all down. There are five  
3 methods. You can use any of the methods, the defendants can  
4 use any of the methods.

5 Some of the methods have costs attached, such as  
6 conducting a deposition. You have to get a court reporter  
7 to stenographically transcribe the proceedings, unless you  
8 agree with defendants' counsel to do it by some other means.  
9 A court reporter charges both by the transcript and by the  
10 hour, but you can go in the Yellow Pages and try to shop  
11 around to get a court reporter.

12 A deposition is a seven-hour question-and-answer  
13 session, under oath. Whereas generally, all the rest of the  
14 methods of discovery are done on paper, a deposition is  
15 live, and they get to ask you questions for that period of  
16 time without you having the questions in advance. I know  
17 for a fact that they're going to notice your deposition, so  
18 I'm telling you a little bit ahead of time.

19 Generally, the parties conduct what's called paper  
20 discovery, which is requests for documents and  
21 interrogatories, which are set forth in Rules 33 and 34.  
22 And after you complete paper discovery, you usually move to  
23 any other discovery device, such as deposition, but that's  
24 not in the rule. In the rule, it says if you serve a paper  
25 discovery request, that the other side gets thirty days from

1 when they receive it to respond to it. So if they make a  
2 request of you in writing, you have thirty days from the  
3 date you receive it to respond to it. If you need more  
4 time, you have to contact the other side to request more  
5 time.

6 So let's go over a little bit what was stated in  
7 your complaint. You say that you were formerly employed by  
8 Silvercrest as a licensed practical nurse and then a  
9 registered nurse, that you began your employment in October  
10 of 2004 and that by March of 2009, you were working as a per  
11 diem R.N.

12 Why don't you tell me in your own words why you  
13 decided to bring the case and what it is you're hoping to  
14 accomplish, Ms. Burton.

15 MS. BURTON: I decided to bring the case, your  
16 Honor, because I was wrongfully terminated and I was  
17 discriminated against.

18 THE COURT: And I do have that as part of your  
19 complaint. I have read the complaint. But what is it that  
20 you're hoping to accomplish by bringing the action, because  
21 generally, Ms. Burton, people bring complaints to the  
22 federal court because they can't allow what happened to go  
23 unchallenged. But if you don't have an end goal in mind, if  
24 you don't know what it is that you're trying to accomplish  
25 by bringing the case, then it's very difficult for us to get

1 to that goal.

2 So have you thought about what it is that you're  
3 hoping will happen by bringing this case?

4 MS. BURTON: Yes, I have, your Honor. As a nurse,  
5 when you're terminated from employment for misconduct, your  
6 chances of being hired ever again are slim to none, which  
7 has happened so far. Therefore, my reputation has been  
8 damaged, my name has been damaged. I have only been a  
9 registered nurse since 2008. Therefore, my ability to be  
10 gainfully employed now and in the future is impossible.

11 It's impossible not only just for a professional  
12 position but a non-professional position. Not even  
13 McDonald's, not even Macy's would hire me, because when  
14 you're terminated as a nurse for misconduct, you're a  
15 liability. You cannot take back those allegations that have  
16 been put out there.

17 THE COURT: Let me just ask you, Ms. Burton,  
18 because I see that there was an entire shift that was cited,  
19 is that correct, the 2 North 11:00 p.m. to 7:00 a.m. shift?

20 MS. BURTON: Yes, your Honor.

21 THE COURT: How many people were in that shift?

22 MS. BURTON: It was seven.

23 THE COURT: And everybody was terminated, you're  
24 saying.

25 MS. BURTON: Yes, your Honor.

1                   THE COURT: So what happened was an elderly  
2 patient fell? Is that my understanding?

3                   MS. BURTON: A patient fell on the evening shift  
4 and he fell on the night shift. No one from the evening  
5 shift was terminated and everyone from the night shift was  
6 terminated.

7                   THE COURT: Now, I just have to make sure you  
8 understand, even though there may be other people that you  
9 say were terminated, this is only your case, brought on your  
10 own behalf.

11                  MS. BURTON: Yes, your Honor.

12                  THE COURT: You say that the defendants retaliated  
13 against you after you filed an EEOC charge in July of 2010.  
14 The event that you're talking about where the resident fell  
15 was May of 2010. Was there an investigation done?

16                  MS. BURTON: With the EEOC?

17                  THE COURT: No, the May, 2010 fall.

18                  MS. BURTON: I don't know what Silvercrest did,  
19 because when I requested information, they refused to give  
20 me information. So I don't know what they did.

21                  THE COURT: Ms. Kantor, because this is going to  
22 be part of the issue, can you tell me in a nutshell what  
23 Silvercrest's position on this is and what was done with --  
24 if it wasn't Silvercrest's position that the fall was what  
25 led to Ms. Burton's termination, now would be a good time to

1 tell me what the legitimate, non-discriminatory reason is,  
2 Ms. Kantor.

3 MS. KANTOR: Your Honor, the fall was one of a  
4 number of incidents. All surrounding the fall were a number  
5 of acts or omissions, frankly, that led to the termination.  
6 And as is stated in the interrogatory response we provided  
7 to plaintiff this afternoon, she was terminated for failing  
8 to supervise or assign someone to supervise a patient she  
9 had been told had just fallen out of a wheelchair right  
10 before her shift.

11 That patient was placed at the nurse's station by  
12 the nurse on the evening shift, the shift prior to Ms.  
13 Burton's, to await an ambulance, because he had indeed  
14 fallen on the prior shift, as Ms. Burton had said and was  
15 vomiting. Of course, a doctor assessed him and it was  
16 determined he needed to go to the hospital.

17 So this was right about the change of shifts. The  
18 patient was placed at the nurse's station. Ms. Burton was  
19 apprised by the evening nurse, as the shift was transferring  
20 over to Ms. Burton's care, what had occurred and, indeed, he  
21 did fall again. So she terminated for failing to either  
22 supervise this patient or assigning someone to supervise  
23 him.

24 Once he did fall, she failed to perform what is  
25 called a full-body assessment. That is, the patient should

1 have been brought back to his bed and should have been  
2 checked out to see if there were any bruises or other  
3 injuries before he went back to the hospital. That did not  
4 happen. She did not take his vital signs. That was a  
5 problem for us.

6           She filled out what is called an occurrence  
7 report, but in the occurrence report, she, Ms. Burton that  
8 is, used the vital signs that had been reported on the prior  
9 shift for this particular occurrence on that paperwork. And  
10 on the EMR, your Honor, which is an electronic medical  
11 record which needs to be kept up to date, Ms. Burton did not  
12 note the fall at all, noted the fall on the prior shift but  
13 did not note the fall on this shift.

14           So for all of those reasons and also for the  
15 failure to provide care to this patient in general -- he had  
16 been picked up, plopped back in the chair and was awaiting  
17 the ambulance. The lack of compassion -- and that would be  
18 from the entire shift, not just Ms. Burton, because that  
19 issue as well --

20           THE COURT: That leads me to the next question:  
21 Were the rest of the shift likewise disciplined?

22           MS. KANTOR: Everybody was let go. Ms. Burton was  
23 the only registered nurse. She was in charge. She was let  
24 go. There was one L.P.N.; that's a licensed practical  
25 nurse. She was let go. And there were certified nurse's

1 aids who were also let go. I believe there were four. I  
2 think Ms. Burton mentioned seven. I thought there were six  
3 but in any event, yes, the shift was let go.

4 THE COURT: Now, Ms. Burton's claim here is that  
5 she was discriminated against on the basis of her being  
6 black. I don't know how your color, brown, and national  
7 origin, American play in, on the basis that you're over  
8 forty, Ms. Burton, and on the basis of a disability, but I'm  
9 not quite sure what the disability is.

10 It may have been that you used the forms that the  
11 Court gives out as the basis for your complaint and you  
12 believed, Ms. Burton, that you needed to check all of the  
13 boxes for the various causes of action. I'm not quite sure.  
14 In other words, I understand that you're making a claim  
15 based on race, and I understand that you're making a claim  
16 based on age, but I don't really understand the national  
17 origin, how being American played into you being terminated.  
18 I don't really understand how -- what the disability is that  
19 you're alleging.

20 MS. BURTON: The other R.N.'s, their national  
21 origin was not American.

22 THE COURT: The R.N.'s on your same shift or on  
23 the different shifts?

24 MS. BURTON: No, the R.N.'s that were not  
25 terminated.

1                   THE COURT: But, again, they're saying that  
2 everyone on your shift was terminated.

3                   MS. BURTON: Everyone on my shift was.

4                   THE COURT: Right.

5                   MS. BURTON: But that's the discriminatory fact,  
6 that the same lack of supervision occurred -- the alleged  
7 lack of supervision occurred on the evening shift and no one  
8 was terminated.

9                   THE COURT: So I'm looking, Ms. Kantor, at the  
10 complaint that was filed, and it appears on paragraph 5 --  
11 it's on page 5, paragraph 6 that Ms. Burton is claiming that  
12 defendants discriminated against plaintiff in that the  
13 people who were on the other shift, 3:00 p.m. through 11:00  
14 p.m., were Haitian and Russian, and that they weren't  
15 terminated on that basis.

16                  Ms. Burton, I didn't do this the last time because  
17 both sides weren't in the courtroom. In an employment  
18 discrimination case, the prerequisites for coming to court  
19 are fairly low. You need to go through the Equal Employment  
20 Opportunity Commission, file a charge of discrimination and  
21 obtain a right to sue letter, which you did before you came  
22 to court. Then, once you bring your complaint, the  
23 defendant responds to the complaint.

24                  But it's my duty to tell you that the plaintiff  
25 bears the burden of proof in all cases that are brought to

1 court where you are trying to vindicate your rights. So in  
2 an employment discrimination case, you have to show that  
3 you're a member of a protected class, that you are otherwise  
4 qualified to do the job, that there was an adverse  
5 employment action taken against you, and that there's an  
6 inference that that adverse employment action was taken  
7 against you based on your membership in the protected class.

8 You've done that by filing your complaint.

9 They've now filed an answer to the complaint and basically,  
10 defendant need only proffer a legitimate, non-discriminatory  
11 reason for why they took the adverse action, which is why I  
12 had them answer that interrogatory, so we could be  
13 completely clear what they're going to say the reason for  
14 your termination was. Then the burden shifts back to you  
15 and you bear the ultimate burden to show that the reason  
16 that they gave is not -- that they were motivated at least  
17 in part by a discriminatory reason.

18 As far as an age claim, the supreme court has made  
19 age claims much more difficult to prove than race or other  
20 types of claims. Age claims, you must prove that your age  
21 was the but-for reason for the termination. Under Title  
22 VII, you have to show that the legitimate, non-  
23 discriminatory reason is a pretext and that the defendants  
24 were motivated at least in part by discrimination. So you  
25 bear the burden of proof on the ultimate issue of

1 discrimination.

2           In employment discrimination cases, the logical  
3 starting point, which is why I had them produce to you your  
4 personnel records, is what's in your personnel records. And  
5 let me tell you, many employees don't have an idea what's in  
6 their personnel records. So having things in your personnel  
7 records doesn't necessarily mean that they violated your  
8 rights because they put something there that you didn't know  
9 about. I'm having them turn those over to you as a starting  
10 point, so you could review those to figure out what other  
11 types of records you need.

12           If you're going to make a request for anybody  
13 else's employment records to try to prove that other people  
14 who you were similarly situated to were treated  
15 differentially because of your protected class, you're going  
16 to have to enter into what's called a protective order with  
17 the defendants. You're going to have to mutually agree with  
18 the defendants that any documents that are exchanged are  
19 kept confidential and will be used solely for the purpose of  
20 this litigation. So they have a duty to their other  
21 employees. If you had a lawyer, your lawyer would enter  
22 into this type of agreement. You don't have a lawyer;  
23 they're even more concerned about giving you records from  
24 other people.

25           Likewise, if you've made a claim for damages, they

1 may be requesting that you release some of your records  
2 regarding any emotional distress claim you may have made or  
3 any claim that you're going to make regarding how this  
4 termination injured you. I don't see, Ms. Kantor, that  
5 there's an emotional distress claim.

6 MS. KANTOR: Your Honor, if I may.

7 THE COURT: Yes.

8 MS. KANTOR: Page 8, paragraph 20 reads,  
9 "Defendants actions affected plaintiff's professional  
10 benefits and mental and physical well-being." I interpret  
11 that in the broadest sense as a claim for emotional distress  
12 damages.

13 THE COURT: So then you'd have to make a choice,  
14 Ms. Burton. If you are going to pursue a claim for  
15 emotional distress damages, they would be entitled to obtain  
16 records of any mental health or physical evaluation or  
17 treatment that you've gotten, and you'd have to sign  
18 releases for them to get access to your doctors' records and  
19 your mental health provider records.

20 MS. BURTON: That's not a problem.

21 THE COURT: Okay. So I'm telling you what you can  
22 look forward to in the litigation. Ms. Kantor is not the  
23 person who did any of these things to you but she does  
24 represent Silvercrest Center, she does not represent you.  
25 And most lawyers are quite uncomfortable speaking to

1 litigants who are unrepresented. So I will tell you, both  
2 of you have the duty to deal with each other. You both have  
3 the duty to treat each other professionally.

4 I would not recommend that you do things by e-  
5 mail, I would recommend that you start off as you would with  
6 anybody else. If you can't agree to something by calling  
7 each other, then you put it in writing. But I don't like e-  
8 mails between pro se litigants and lawyers because I think  
9 that lawyers are used to getting quite a few e-mails a day  
10 and that if they don't respond right away, you take that as  
11 a sign that they're not paying attention. I'd rather it be  
12 phone calls if you need to and in writing, whatever else  
13 needs to be done.

14 You will need to meet with each other, and you're  
15 going to have to get a confidentiality order so that if they  
16 have to turn over records of other employees, they have your  
17 signature saying that you'll keep it confidential.

18 Likewise, if they get access to your medical records and  
19 your mental health records, they have signed a document  
20 saying that they will keep those things confidential, so  
21 it's mutual.

22 Ms. Kantor, I'm quite confident that Nixon Peabody  
23 has its own confidentiality forms. I'm going to ask you to  
24 boil those forms down so that it's something that Ms.  
25 Burton, who's very intelligent, will understand and know

1 what she's signing.

2 Ms. Burton, don't ever sign anything without  
3 keeping a copy of it for your own record. If she sends you  
4 a copy of it and you sign it, keep a copy for yourself. You  
5 could always ask her to forward two copies to you, okay?

6 MS. BURTON: Yes, your Honor.

7 THE COURT: And if you have a question about  
8 anything that's in a document, your starting point is to try  
9 to discuss that with Ms. Kantor, not writing to the Court in  
10 the first instance, okay?

11 MS. BURTON: Yes, your Honor.

12 THE COURT: Okay. So, Ms. Burton, I've just given  
13 you the basics about discovery. My job is to move the case  
14 forward. You bring the case to court, my job is to move the  
15 case forward. Generally, that means setting deadlines. I  
16 don't have conferences throughout the case. I start it with  
17 a pretrial conference to set the deadlines and then if  
18 there's a breakdown between the parties and they're unable  
19 to resolve a dispute regarding discovery, you can then,  
20 after diligently trying to work it out between yourselves,  
21 you can then write to the Court or request a conference.

22 You could also request a settlement conference.  
23 If the parties are talking about how they might be able to  
24 resolve the case without going through the whole litigation,  
25 I'm more than happy to help you try to reach a resolution

1 here. That's why I was asking you those questions about  
2 what it was that you were hoping to accomplish. Usually,  
3 the defendant is not going to agree to give you full relief.

4 Let me tell you for a moment what full relief is  
5 under the statute. If you prevail in an employment  
6 discrimination case, Congress in its wisdom has afforded  
7 that you can be reinstated to put you back in the position  
8 you would have been had you never been terminated and that  
9 you could get back pay from the date that you were  
10 terminated until the date that you are reinstated.

11 However, there is something called mitigation of  
12 damages, where you're not supposed to just put your feet up  
13 and sit back. You're supposed to make an effort to get re-  
14 employed, and the defendants are entitled to ask for records  
15 regarding what efforts you've made to try to get re-  
16 employed.

17 There's also compensatory damages, which is where  
18 your request for emotional distress damages come in. If you  
19 can show that you were injured and that it caused you  
20 damages other than the back pay, you can make a claim.  
21 Title VII, the statute that prohibits employment  
22 discrimination based on race, gender, religion, national  
23 origin and color provides for caps, depending upon how many  
24 employees there are. So depending upon how many employees  
25 are in -- I don't know if it's just Silvercrest as the

1 defendant or it's a bigger corporation.

2 Ms. Kantor?

3 MS. KANTOR: My understanding is it's just  
4 Silvercrest.

5 THE COURT: So depending upon how many people they  
6 employ, there are caps on the compensatory damage awards  
7 provided in the statute.

8 Age discrimination and disability discrimination  
9 are separate statutes, Ms. Burton. They do follow somewhat  
10 from Title VII because they were passed after Title VII was  
11 passed. Title VII is a 1964 Civil Rights Act. It was at a  
12 time when no discrimination was unlawful. People were  
13 allowed to publish in newspapers "no blacks need apply, no  
14 women need apply, no Jews need apply." That was legal until  
15 this Act was passed.

16 So although many people feel that they've been  
17 treated unfairly in the job, I will tell you it's much  
18 harder to prove discrimination than it is to prove that  
19 something unfair happened on a job. Do you understand, Ms.  
20 Burton?

21 MS. BURTON: Yes, I do, your Honor.

22 THE COURT: Okay. Ms. Burton, as I said, my job  
23 is to set deadlines and generally, I give parties in a  
24 single person employment discrimination case three to four  
25 months to complete discovery. Is there a reason why that

1 would not be a sufficient amount of time? That means that I  
2 would set discovery to close sometime in October.

3 Again, remember, you need to send any request and  
4 give them thirty days to respond. Except for a notice of  
5 deposition, which is generally scheduled with about two  
6 weeks' to four weeks' notice, every other type of device in  
7 the rules requires thirty days to respond once they receive  
8 the request. Do you believe that it would be a sufficient  
9 amount of time to give you both until the end of October?

10 MS. BURTON: Your Honor, I would need a little bit  
11 longer time because I go on vacation from July 12<sup>th</sup> to August  
12 16<sup>th</sup>.

13 THE COURT: Good for you. So if I set it in  
14 November, will that work for you, Ms. Burton?

15 MS. BURTON: I think that would be sufficient,  
16 your Honor.

17 THE COURT: And how about for you, Ms. Kantor?

18 MS. KANTOR: I'm sorry, your Honor, that would be  
19 the end of November?

20 THE COURT: No, middle of November.

21 MS. KANTOR: That's fine.

22 THE COURT: Okay.

23 Now, when I set the deadline, I'm not micro-  
24 managing when you send things out but please keep in mind,  
25 Ms. Burton, that if I set the deadline as I am for November

1       15<sup>th</sup>, you must send something out before October 15<sup>th</sup> in order  
2 to get a response. You can't wait until the deadline to  
3 make the requests.

4              Likewise, if they notice you for a deposition, Ms.  
5 Burton, and the date that they give you when they send you  
6 the notice is inconvenient, you must contact Ms. Kantor  
7 immediately. Don't wait until the day of the deposition or  
8 else they will move for sanctions against you, which could  
9 cover the costs of hiring a court reporter, okay?

10             MS. BURTON: Yes.

11             THE COURT: They will work with you to get a date  
12 that's agreeable to you.

13             Okay, so November 15<sup>th</sup> is the deadline to complete  
14 all discovery and then Judge Townes has her individual rules  
15 regarding any motion for summary judgment. Many cases do  
16 not make it to trial. Many cases are dismissed on motions  
17 asking for judgment as a matter of law, saying that based on  
18 the facts that you've given, even assuming them to be true,  
19 that a reasonable jury could not find in your favor under  
20 the law.

21             In order to make that kind of motion, judges  
22 require permission and a schedule to be set. So I'm saying  
23 within two weeks of the deadline for discovery, you need to  
24 write to Judge Townes to make a request. I'm saying two  
25 weeks, knowing that Thanksgiving holiday falls right in

1 between. So I'm saying that you have to make the request --  
2 I'm giving you a couple of days leeway -- by December 5<sup>th</sup>.  
3 That doesn't mean to make the motion, that means to write to  
4 Judge Townes to request a pre-motion conference. And I will  
5 tell you that a number of judges, if you set forth the  
6 grounds and you set forth a schedule, can obviate the need  
7 for the pre-motion conference and instead give permission on  
8 the schedule that's proposed.

9                 Always build in at least thirty days for a pro se  
10 litigant to oppose, and keep in mind, Ms. Kantor, that under  
11 Local Rule 56.2, there's a special notice that's required if  
12 you're moving for summary judgment against a pro se party.  
13 And if you fail to give that notice, the motion must be  
14 denied.

15                 MS. KANTOR: Thank you, your Honor.

16                 THE COURT: Okay, Ms. Burton, do you have other  
17 questions for me today? I've set the schedule for November  
18 15<sup>th</sup>. I'm going to put that into a written order. Is there  
19 any reason to believe that you need to amend your complaint  
20 at this point in time?

21                 MS. BURTON: No, your Honor.

22                 THE COURT: No?

23                 MS. BURTON: No.

24                 THE COURT: Well, again, I'll build in a period of  
25 thirty days. If you don't move to amend by that date, then

1 your time to amend has passed, okay? November 15<sup>th</sup> to  
2 complete all discovery and December 5<sup>th</sup> if there's going to  
3 be any application to the district judge for a pre-motion  
4 conference.

5 As far as a confidentiality agreement, I would  
6 like you both to work on that in the next two weeks, to get  
7 a confidentiality agreement that you both can agree on, you  
8 both are going to sign, and then you're going to the Court  
9 to enter that, okay? That will protect both of you. That  
10 way, if they ask you to sign releases for your medical  
11 records or your mental health providers, you won't be  
12 worried that they're going to use it for any other purpose.  
13 Likewise, if they're going to turn over documents regarding  
14 any of these other employees that you say worked on the  
15 other shift, they won't feel that you're going to use it for  
16 any other purpose, okay?

17 MS. BURTON: I have a question.

18 THE COURT: Yes.

19 MS. BURTON: In reference to these documents, is  
20 this considered as an interrogatory or this is a request for  
21 documents?

22 THE COURT: What is "this," that they've given  
23 you?

24 MS. BURTON: That they've given me.

25 THE COURT: I directed them to produce these

1 documents, so they're considered documents because that's  
2 what they're coming from. But you're not -- if your  
3 question was that you're limited to 25 interrogatories,  
4 that's your own interrogatories. What I directed her to do  
5 does not count toward your quota, okay?

6 MS. BURTON: Okay.

7 THE COURT: Anything else, Ms. Burton? So I'm  
8 saying a confidentiality agreement within two weeks. We're  
9 currently at 7/11, so that puts us to 7/25. Work with Ms.  
10 Kantor. If you don't understand anything in it, have her  
11 explain. You can get the language boiled down so that you  
12 both can agree to it. If there's a problem with that, it's  
13 not a good sign, but you can call upon me. Hopefully, you  
14 won't need to.

15 Anything else, Ms. Burton?

16 MS. BURTON: Yes, your Honor. In regards to the  
17 tape recorder, you did say that I didn't need to bring one  
18 but can I bring one?

19 THE COURT: They're generally not permitted in the  
20 courthouse, and that goes for everyone. And unless there's  
21 a trial where there's some media thing that needs to be  
22 played that the Court doesn't have a way to play it, you're  
23 generally not allowed to bring devices into the courthouse.  
24 That's why they take phones, they take PDF's. You're not  
25 allowed to for security reasons.

1           If you need a copy of the transcript, that's  
2 something you can request. Is that what you're requesting,  
3 a copy of today's transcript?

4           MS. BURTON: That's not the issue. I have had  
5 other situations where recordings have gotten lost and what  
6 was transcribed was transcribed inaccurately, to say the  
7 least.

8           THE COURT: Well, again, the general rule is no,  
9 and I can tell you that it's few and far between where a  
10 tape recorder is brought in, and it's generally for a trial  
11 or a hearing, okay?

12           MS. BURTON: Thank you, your Honor.

13           THE COURT: Anything further, Ms. Kantor?

14           MS. KANTOR: Yes, your Honor, two things, or three  
15 actually: I do not have the telephone number for Ms.  
16 Burton.

17           THE COURT: Okay. Can I ask the two of you to  
18 deal with that outside?

19           But she will need a way to reach you, Ms. Burton.

20           MS. BURTON: I don't have a phone.

21           THE COURT: Well then, how should she reach you if  
22 she needs to reach you?

23           MS. BURTON: Basically, by mail, which there is a  
24 problem because my e-mails are hacked, my mail is  
25 intercepted and when I had a phone, they were intercepted as

1 well, so you know --

2 THE COURT: But what are we going to do if we need  
3 to call off a date that's been set? How is the best way to  
4 get in touch with you?

5 MS. BURTON: I would say mail.

6 THE COURT: And is it a P.O. box or is it a  
7 regular address?

8 MS. BURTON: No, regular address.

9 THE COURT: So you could Fed Ex if you needed to  
10 get her on an overnight basis, okay? And that has a  
11 tracking receipt, so that's usually what I recommend.

12 MS. KANTOR: Absolutely. Issue number two, your  
13 Honor, is as far as the confidentiality order is concerned,  
14 would you like us to submit that to the Court for the  
15 Court's --

16 THE COURT: Before? No, not before. Send her  
17 your usual. Try to boil down the language and give her two  
18 copies, so she could mark up one. If she's ready to sign it  
19 as is, so be it.

20 Otherwise, Ms. Burton, it's incumbent on you to  
21 call Ms. Kantor. If you don't have a phone number where she  
22 could call you back, lawyers do have more than a couple of  
23 cases at a time. So if you can't get through to her on the  
24 moment that you call her to discuss something, you should  
25 leave a message and say -- you know, ask the secretary when

1       is a good time to call back, because if she can't call you,  
2       you're going to have to try her back at an hour.

3                   So you should let your -- the person who's your  
4       assistant know that she doesn't have a phone and if you're  
5       in a meeting, to give a different hour that she could call,  
6       okay?

7                   MS. KANTOR: Certainly. Once Ms. Burton and I do  
8       come to agreement as to the contents of the confidentiality  
9       order, I would like to submit it to the Court --

10                  THE COURT: That's fine. Once both parties have,  
11       signed, I can so order that, and that could be entered as an  
12       ECF document.

13                  Most documents are filed electronically. Because  
14       a pro se litigant won't have access to the electronic  
15       filing, once you both agree on it, she can file it, scan it  
16       in electronically for me to so order, and you would be able  
17       to see that the record has been received by coming into the  
18       Court and looking on those ports that are downstairs, the  
19       computer terminals.

20                  MS. BURTON: Yes.

21                  THE COURT: Okay.

22                  MS. KANTOR: The last question, your Honor, is out  
23       of an excess of caution. Ms. Burton indicates she will be  
24       going -- you know, she's on vacation for a month, but I did  
25       notice obviously that your Honor expects us to work on the

1 confidentiality agreement and have that done in a couple of  
2 weeks. So I'm assuming but just want to make sure that the  
3 next month is not a discovery-free month or that --

4 THE COURT: No, no, no. You should get started  
5 now.

6 Ms. Burton, you should get this worked out, the  
7 confidentiality agreement and the releases for any medical  
8 or mental health provision before you leave, because that  
9 usually holds up discovery, because doctors' offices  
10 certainly don't jump when you give them a release.

11 And the releases are HIPAA releases. You should  
12 provide them to Ms. Burton so she could look over them.  
13 They say that you're releasing to defendant. Any records  
14 that they get, Ms. Burton, they will make a copy for your  
15 records. Just like these records should all have numbers  
16 stamped on them -- do you see at the bottom corner that  
17 there are numbers stamped?

18 MS. BURTON: Yes, your Honor.

19 THE COURT: What I will say to you, Ms. Burton, is  
20 keep those documents, one set of them in that order. If you  
21 want to take them apart and look at them in different piles,  
22 that's fine. They're yours to do what you will with them.  
23 But it's a lawyer's trick to keep one as it was given to  
24 you, because if you start taking them apart, then you don't  
25 know where this number went to, and they're going to say

1 they gave them to you in sequential order, okay? So if they  
2 were to get your medical records, they would produce  
3 numbered copies of those records to you.

4 MS. BURTON: Your Honor, I just need to let you  
5 know that I have an uncontrollable situation at my residence  
6 of home invasion, which is involving theft of the documents.

7 THE COURT: Well, I can't deal with all the  
8 problems, Ms. Burton. I'm just trying to set up as best I  
9 can so you know what to expect during the litigation, okay?

10 MS. BURTON: Thank you.

THE COURT: Okay. So, Ms. Kantor and Ms. Burton,  
you're expected to meet. You can do it today if you have  
anything to talk about, but you are expected to get this  
confidentiality order exchanged, signed, submitted to the  
Court. The Court is setting November 15<sup>th</sup> as the deadline  
for all discovery and 12/5/11 for any request to Judge  
Townes regarding a dispositive motion.

With that, this matter is adjourned. Thank you very much.

20 MS. KANTOR: Thank you, your Honor.

21 MS. BURTON: Thank you, your Honor.

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18 I certify that the foregoing is a correct transcript  
19 from the electronic sound recording of the proceedings in  
20 the above-entitled matter.

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25 ELIZABETH BARRON

July 19, 2011